

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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SHIQIANG GAO AND JIANMIN PENG,

Plaintiffs,

-against-

UMI SUSHI, et al,

Defendants.

18-cv-06439 (ALC) (SN)

ORDER

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ANDREW L. CARTER, JR., District Judge:

On February 21, 2023 the Clerk of this Court entered judgment in favor of Plaintiffs against Defendants in the amount of \$206,103.76 plus applicable interest. ECF No. 123.

On September 9, 2023, Plaintiffs moved under Rule 60(a) to alter or amend the Clerk’s judgment. ECF No. 126. Plaintiffs seek for an amended judgment to be entered against Defendants Umi Sushi, Inc. and Luo Kun Zheng. ECF No. 128. Defendants did not file a response, and Plaintiffs did not file a reply. This matter is fully briefed.

Under Federal Rule of Civil Procedure 60(a), “[t]he court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record.” *Id.*

On January 31, 2023, Magistrate Judge Sarah Netburn recommended that the Court find Defendants Umi Sushi and Luo Kun Zheng liable in the amount of \$206,103.76 plus applicable interest. ECF No. 121 at 1, 29. Judge Netburn’s report and recommendation specifically defined “Defendants” as encompassing only Umi Sushi and Luo Kun Zheng. *Id.* at 1. On February 17,

2023, the Court adopted Judge Netburn's report and recommendation, ECF No. 122. In its order, the Court found Defendants liable for \$206,103.76 plus applicable interest. *Id.* at 2. The Court did not specify which Defendants were liable. The Clerk of the Court entered the judgment on February 21, 2023. ECF No. 123.

Plaintiffs have moved to alter or amend the Clerk's judgment on the basis that judgment it contains a clerical error as it is entered against all Defendants, rather than specifically Defendants Umi Sushi and Luo Kun Zheng, as Judge Netburn recommended. ECF No. 121 at 1. The record shows the Court intended to adopt Judge Netburn's recommendation in full, yet omitted Judge Netburn's language holding only Defendants Umi Sushi and Luo Kun Zheng liable. ECF No. 122. As such, the Court erred in omitting this language from its judgment.

CONCLUSION

The Court hereby VACATES the Clerk's Judgment of February 21, 2023, ECF No. 123, and enters this Amended Judgment as follows:

It is hereby ORDERED, ADJUDGED AND DECREED: that Plaintiff's motion under Fed. R. Civ. P. 60(a), ECF No. 126, is **GRANTED**.

It is further ORDERED, ADJUDGED AND DECREED: Magistrate Judge Sarah Netburn's January 31, 2023 Report and Recommendation, ECF No. 121, is adopted in full. The Court finds that Defendants Umi Sushi and Luo Kun Zheng are liable for \$206,103.76 plus applicable interest, as follows:

(1) \$13,050.55 in back pay and spread-of-hours damages to Plaintiff Gao, plus nine percent prejudgment simple interest, calculated from January 26, 2018, to the date of judgment;

(2) \$72,708.68 in back pay and spread-of-hours damages to Plaintiff Peng, plus nine percent prejudgment simple interest, calculated from February 8, 2017, to the date of judgment;

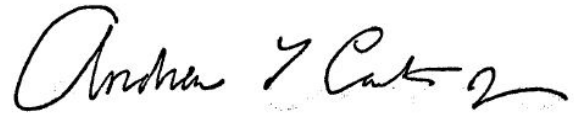
- (3) \$13,050.55 in liquidated damages to Plaintiff Gao;
- (4) \$72,708.68 in liquidated damages to Plaintiff Peng;
- (5) \$32,466.68 in attorneys' fees; and (6) \$2,118.62 in costs.

It is further ORDERED, ADJUDGED, AND DECREED that post judgment interest is payable on the above judgment amounts pursuant to 28 U.S.C. § 1961 calculated from the date of judgment to the date of payment.

The Clerk of the Court is respectfully directed to terminate the open motion at ECF No. 126.

SO ORDERED.

Dated: February 14, 2024
New York, New York

A handwritten signature in black ink, appearing to read "Andrew L. Carter, Jr.", written over a horizontal line.

ANDREW L. CARTER, JR.
United States District Judge